

Original

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APR 20 1992

April 20, 1992

Federal Communications Commission  
Office of the Secretary

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APR 22 7 10 AM '92  
FM EXAMINERS

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: Westerville Radio Partners  
BPH-911230MF  
Channel 280A  
Westerville, Ohio

Dear Ms. Searcy:

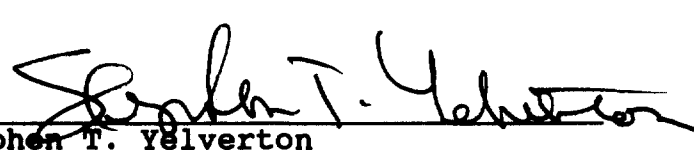
Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and four (4) copies of its "Reply to Opposition of Westerville Radio Partners a/k/a Kyong Ja Matchak."

Please contact the undersigned in our Washington D.C. office.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY:

  
Stephen T. Yelverton  
Attorneys for Ohio Radio  
Associates, Inc.

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APR 20 1992

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

short-spaced applicants in a comparative hearing if another applicant proposes a technically suitable and available fully-spaced tower site, applies only where a waiver of Section 73.207 is required. WRP further contends that if processing under Section 73.215 is requested a waiver is not needed. However, WRP misreads Section 73.215. The use of that provision is a waiver of Section 73.207.

WRP ignores the language of Section 73.215 which states that a short-spaced application filed under this provision may be granted only when the Commission determines that the grant would serve the public interest, convenience and necessity. No public interest justification can be found if there are fully-spaced tower sites available which are technically suitable. Naquabo Broadcasting Company, 6 FCC Rcd. 4879, para. 5 (1991). WRP does not contest that ORA's proposed tower site is available and technically suitable.

WRP offers no support for its novel proposition that a request for Section 73.215 processing for a directional antenna exempts a short-spaced applicant from dismissal. Moreover, no public interest rationale would support such a special exception to Commission policy. Why should an applicant be considered in a comparative hearing if it proposes a short-spaced tower site which requires the Commission to spend time and resources processing a directional antenna proposal, when other applicants propose a fully-spaced tower site which would require no such special processing? Commission policy strongly disfavors short-spaced tower sites and allows directional antennas only

when necessary. Here, there is no need to be short-spaced and to use a directional antenna.

WRP contends that the adoption of Section 73.215 eliminated the requirement that no fully-spaced and technically suitable tower sites be available. However, it cites to no Commission precedent in support. In MM Docket No. 87-121, 4 FCC Rcd. 1681 (1989), the Commission stated, at paras. 2, 5, 26, and 30, that directional antennas were contemplated to be used only where fully-spaced tower sites are unavailable or had limited suitability. To hold otherwise, would effectively repeal Section 73.207 and would allow tower sites to be placed anywhere so long as no actual interference is caused. However, the purpose of the minimum spacing requirements is not only to prevent interference, but also to allow a sufficient buffer zone for stations to modify or improve their facilities. North Texas Media, Inc. v. FCC, supra, at 33-34, n. 27.

WRP, in its opposition, contends that an amendment which changed its name, ownership structure, and engineering proposal was timely filed on March 9, 1992. However, Commission records show that the amendment was late-filed on March 10, 1992. Moreover, the Commission's public notice of March 17, 1992, Report No. 15218, shows that the amendment was filed March 10, 1992. See, attachments 1 and 2. WRP failed to explain why the Commission records show a filing date of March 10, 1992. Accordingly, the amendment must be treated as late-filed.

WRP ignores ORA's contention that the WRP application, as originally filed, is not in compliance with the Commission's

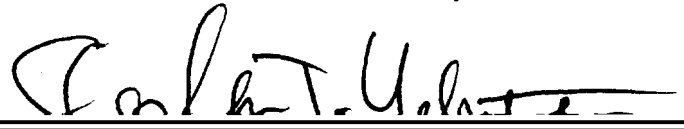
"hard look" policy adopted in Report and Order in MM Docket No. 84-750, 50 Fed. Reg. 19936 (1985). The Report and Order requires that FM broadcast applicants submit a map which clearly and legibly shows the legal boundaries of the community to be served. A review of WRP's application, as originally filed, indicates that the maps contain no such delineation of the legal boundaries of Westerville. Accordingly, dismissal of WRP's application is required on this basis alone.

WHEREFORE, in view of the foregoing, ORA requests that the Commission deny and dismiss the application of WRP. It failed to refute that Commission policy mandates the dismissal of short-spaced applicants in a comparative hearing if another applicant proposes a fully-spaced tower site which is available and technically suitable.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY:

A handwritten signature in dark ink, appearing to read "Robert T. Uhlir", is written over a horizontal line. The signature is fluid and cursive.

## FM BROADCAST STATION APPLICATIONS AMENDMENT RECEIVED

OH BPH	-911230MF	NEW 103.9MHZ	WESTERVILLE RADIO PARTNERS WESTERVILLE , OH	LEGAL AND ENGINEERING AMENDMENT (AMENDMENT # 920310ME)
OH BPH	-911231MA	NEW 103.9MHZ	SHELLEE F. DAVIS WESTERVILLE , OH	LEGAL AMENDMENT (AMENDMENT # 920310MC)
OH BPH	-911231MC	NEW 103.9MHZ	OHIO RADIO ASSOCIATES, INC. WESTERVILLE , OH	LEGAL & ENGINEERING AMENDMENT (FILE NO. 920309MF)
TN BPH	-920109MA	NEW 103.1MHZ	DARRELL BRYAN TUSCULUM , TN	FAA AMENDMENT (FILE NO. 920309ME)
TX BPH	-901221IA	KNNC 107.7MHZ	REES-SLAYMAKER RADIO P/SHIP I. L.P. GEORGETOWN , TX	LEGAL AMENDMENT (FILE NO. 920305IE)
UT BPH	-911002IF	KCDH 92.7MHZ	CHARLES D. HALL NEPHI , UT	ENGINEERING AMENDMENT (FILE NO. 920306IA)

## COMMERCIAL TV BROADCAST STATION APPLICATIONS ACCEPTED FOR FILING

SC BNPCT	-920310KE	WCTP CHAN-36	CARD CORP. CHARLESTON , SC	MODIFICATION OF CONSTRUCTION PERMIT (BPCT-850215KJ) TO EXTEND COMPLETION DATE. CONSTRUCTION PERMIT ORIGINAL GRANT DATE: 08-21-86; CONSTRUCTION EXPIRATION DATE: 03-10-92 DENNIS F. BEGLEY-ATTORNEY
WA BNPCT	-920309KG	KBEH CHAN-51	BELLEVUE BROADCASTING COMPANY LTD. BELLEVUE , WA	MODIFICATION OF CONSTRUCTION PERMIT (BPCT-850215KR) TO EXTEND COMPLETION DATE. CONSTRUCTION PERMIT ORIGINAL GRANT DATE: 02-06-87; CONSTRUCTION PERMIT EXPIRATION DATE: 04-07-92 RICHARD F. SWIFT-ATTORNEY

## VHF TV TRANSLATOR LOW POWER BROADCAST APPLICATIONS ACCEPTED FOR FILING

IN BAPTVL	-920306IA	WO4CQ CHAN-4	WINGFIELD LIVINGSTON CHUBB CHESTERTON , IN	VOLUNTARY ASSIGNMENT OF CONSTRUCTION PERMIT (BPTVL-891208WY, AS MODIFIED, FOR NEW STATION) FROM: WINGFIELD LIVINGSTON CHUBB TO: T.V. 4 INDIAN OAK CORPORATION (FORM 316)
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Attachment 2

Re: Westerville Radio Partners  
Westerville, Ohio  
File No. 91123OMF

RECEIVED

MAR 10 1992

AMENDMENT

Federal Communications Commission  
Office of the Secretary

Westerville Radio Partners hereby amends its above-noted application for a new FM radio station in Westerville, Ohio to incorporate the enclosed materials, which should be substituted for those corresponding documents contained in its application.

Respectfully submitted,

WESTERVILLE RADIO PARTNERS

*[Handwritten signature]*

CERTIFICATE OF SERVICE

I, Kate D. Shawcross, a secretary in the law offices of Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this 20th day of April, 1992, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Reply to Opposition of Westerville Radio Partners a/k/a Kyong Ja Matchak" to the following:

Dennis Williams, Chief\*  
FM Branch  
Room 332  
Federal Communications Commission  
Washington, D.C. 20554

William D. Freedman, Esq.  
Gurman, Kurtis, Blask & Freedman, Chartered  
1400 Sixteenth Street, N.W.  
Suite 500  
Washington, D.C. 20036  
Counsel for Westerville Radio Partners

Kate D. Shawcross  
Kate D. Shawcross

Hand Delivery\*

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